IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11243 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGNALAL VELJIBHAI DOMADIA SARPANCH

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioner

Ms NANDINI JOSHI, AGP for Respondent No. 1

MR PV HATHI for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 21/06/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner had challenged the order dated 17.10.2000 passed by the District Development Officer, Junagadh removing the petitioner from the office of Sarpanch of Vadal Gram Panchayat and more particularly

the petitioner had prayed for interim stay of operation and implementation of the said order during pendency of the appeal before the Development Commissioner who refused to grant interim stay in favour of the petitioner at the hearing on 20.10.2000.

2. While issuing notice on this petition, this Court granted ad-interim relief on 24.10.2000 staying the operation, implementation and execution of the aforesaid order dated 17.10.2000 passed by the District Development Officer. In view of the above ad-interim relief which was continued from time to time, the petitioner continued to hold the office of Sarpanch of Vadal Gram Panchayat. Affidavit in reply dated 10.11.2000 was filed by the District Development Officer, Junagadh and the rejoinder was also filed by the petitioner on 18.12.2000. However, when the petition has reached further hearing today, Mr Jayant Patel, learned counsel for the petitioner states that now the term of the Sarpanch has already come to an end by efflux of time.

3. In view of the above, the petition could have been disposed of as infructuous. However, Mr Patel for the petitioner submits that if the petition is disposed of as infructuous, the impugned order of removal would survive and the question of disqualification of the petitioner from contesting elections in future would arise. Mr Patel, therefore, submits that the petitioner is still desirous of prosecuting the appeal before the Development Commissioner and, therefore, the ad-interim relief granted earlier may be continued to enable the petitioner to prosecute his appeal before the Development Commissioner.

4. Ms Nandini Joshi, learned AGP appearing for the State Government and Mr PV Hathi, learned counsel for the District Development Officer, Junagadh oppose the request and submit that when the term of the Sarpanch has expired, the petition deserves to be dismissed as infructuous.

5. Having heard the learned counsel for the parties and having regard to the consequences which would ensue if the ad-interim relief granted earlier is vacated, it appears to the Court that it would be in the interests of justice to dispose of this petition with a direction to the Development Commissioner to hear and decide the appeal as expeditiously as possible and to continue the ad-interim relief granted earlier till the disposal of the appeal.

6. Ordinarily this Court would not continue the ad-interim/interim relief till the disposal of the appeal pending before the Development Commissioner. However, in view of the fact that the term of the office of the Sarpanch has already come to an end by efflux of time and the only question is about disqualification of the petitioner from contesting elections in future, the Court thinks it fit to continue such ad-interim relief till the disposal of the appeal in view of the assurance being held out by the learned counsel for the petitioner that the petitioner shall co-operate for expeditious disposal of the appeal.

7. In view of the above discussion, the petition is disposed of with a direction to the Development Commissioner/Additional Development Commissioner to hear and decide the petitioner's appeal against the impugned order dated 17.10.2000 passed by the District Development Officer under Section 57(1) of the Gujarat Panchayats Act, 1993 as expeditiously as possible and preferably by 31.10.2001 and the ad-interim relief granted earlier by this Court against operation, implementation and execution of the said order dated 17.10.2000 shall continue till the disposal of the appeal. It is further directed that the ad-interim relief granted earlier by this Court and continued from time to time shall continue till the disposal of the appeal and till the communication of the decision to the petitioner.

Rule is made absolute to the aforesaid extent with no order as to costs.

The petition accordingly stands disposed of.

(M.S. Shah, J.)

sundar/-